

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1518 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
- 

GUJARAT PHENOLIC SYNTHICS PVT.LTD

Versus

TRIBHOVANDAS B PATEL DECD.THRONEIRS BHAILALBHAI T PATEL

-----

Appearance:

Mr.Sanjiv Trivedi for  
MR DUSHYANT A DAVE for appellant.  
Mr.S.C.Shah for respondents.

-----

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/09/2000

ORAL JUDGEMENT

1. This Appeal is by the defendant against the judgment and decree passed in Civil Suit No.227 of 1974 on 31.3.80 by the Joint Civil Judge (S.D.), Vadodara whereby the plaintiff's suit was decreed against the defendant for a sum of Rs.6000/- towards the suit claim

with running interest at the rate of 6% per annum from the date of the decree to the date of realisation and the defendant was restrained by permanent injunction from discharging the phenol and/or formaldehyde gas causing damage to the crop of the plaintiff. During the pendency of this Appeal before the court, respondent original Plaintiff expired and, therefore, his legal representatives were sought to be brought on record through Civil Application No.6516/2000 and that Civil Application was decided on 11.8.2000 bringing the legal representatives of the deceased respondent - original Plaintiff on record. It may also be pointed out that an Application had also been made for setting aside the abatement of the Appeal and the abatement was also set aside in Civil Application No.7035/2000 on 11.8.2000.

2. The plaintiff, claiming to be the owner and occupant of agricultural land admeasuring 1 Acre and 1 Guntha out of Revenue Survey No.856, situated in the sim of village Chhani, filed the present Suit on 4.9.74 alleging that adjoining to the agricultural field of the plaintiff, the Factory of the defendant was situated in Survey No.854. In the said Factory, goods were being manufactured by chemical process and as a result of this chemical process, the gas, which was being liberated, was causing injury to the standing crop of the plaintiff in his agricultural field. It was alleged that the crops were being damaged for last eight years. It was also alleged that the plaintiff used to take about 4 to 5 crops in a year with the help of water from the well. It was also alleged that the standing crop of radish (Moola) had been damaged by the said injurious gas. It was alleged that the gas was like tear gas which was injurious to the health of the persons working in the field as well as the crops and according to the plaintiff, he suffered the damage to the tune of Rs.5000/- every year and was therefore entitled to the damages at least for three years prior to the filing of the Suit and thus a sum of Rs.15,000/- was claimed. In the Suit, prayer was also made for permanent injunction. On behalf of the defendant, written statement Exh.11 was filed seeking to traverse the claim of the plaintiff and the plaintiff's case that injurious gas was being liberated as a result of the chemical reaction in the Factory was denied. It was also denied that gas was causing any damage to the standing crop. The Certificate dated 31.12.66 for starting the construction of the Factory was available with the defendant and that the production was started only in the year 1969. it was also stated that the chemical reaction takes place only for a period of half an hour in a day and that the gas,

which is liberated as a result of this chemical reaction, is lighter than air and hence it goes up in the air and does not remain on the ground. It was further alleged that there was a Chimney of 30 ft. height around the furnace and there was no possibility of gas being leaked out. It was also alleged that on west of the Factory there is a road and beyond it there is a factory of Gujarat State Fertilizer Corporation, which manufactures fertilizers, sulphuric smokes from the factory of Gujarat State Fertilizer Corporation comes out and causes damage to the crop and for that purpose the Gujarat State Fertilizer Corporation pays compensation to all the concerned farmers. The plaintiff could not get any compensation and so he has filed the false suit to extract amount from the defendant. The allegation that the plaintiff was taking 4 to 5 crops in a year has been denied and the allegation that the crop of Radish had suffered damage had also been denied. It was also pleaded on behalf of the defendant that there were about 100 persons working in the Factory and some of the members of the staff were permanently residing in the Factory premises and further that about ten thousand persons were working in the Factory of Gujarat State Fertilizer Corporation. In sum and substance, the written statement was that of complete denial.

3. On the basis of the pleadings of the parties, the trial court framed following issues, which were decided by the trial court on the basis of the evidence tendered before the trial court as per the findings mentioned against each of the issues as under:-

1. Whether the plaintiff proves that the defendant is discharging dangerous and harmful gases causing damage to the crop of the plaintiff?    In the affirmative
  2. If yes, whether the plaintiff proves the suit amount of any of the amount as damages?    Yes, to the tune of Rs.6000/- only
  3. Whether the plaintiff is entitled to the injunction as prayed for?    In the affirmative
  4. What decree?    As per order passed below.
4. I have heard learned counsel for the appellant and respondents and have gone through the impugned

judgment. Learned counsel for the appellant has assailed the findings of the trial court on the basis of the evidence of Purshottambhai Jethabhai Parikh, Managing Director of the Factory, who was examined at Exh.77 and the evidence of Ravjibhai Mangalbhai Patel i.e. Chief Agronomist of Gujarat State Fertilizer Corporation Ltd. at Exh.86 and the cross examination of the witnesses, namely, Rasnidhi Ramanlal Parikh, who was examined at Exh.48 by the plaintiff as an expert witness and the cross examination of the plaintiff himself at Exh.27.

5. The factual position with regard to the plaintiff's agricultural field being adjacent to that of the Factory of the defendant is not in dispute. It is also not in dispute that in the factory chemical reaction takes place, out of which the gas i.e. phenol and/or formaldehyde is discharged. On the question as to whether this gas is dangerous and hazardous and causes damage to the crop of the plaintiff, the evidence of the witness Rasnidhi Ramanlal Parikh, who was examined at Exh.48, assumes importance in this case besides the say of the plaintiff himself at Exh.27. The witness Rasnidhi Ramanlal Parikh, who was examined at Exh.48, had served in a Drug Control Laboratory at Vadodara, he is a qualified person holding the Degree of M.Sc. in Organic Chemistry. He has stated that he had been in England for about 11 years where he worked in Crookes Laboratory. In his deposition dated 12.2.78 he has stated that he had visited the plaintiff's field. He has stated that the defendant had a manufacturing shed from which formaldehyde gas was being emitted. He admitted that there is a Chimney of about 30 to 40 ft. height. He has stated that the entire gas does not pass through the said Chimney, he has stated that some gas was coming out of the holes of the manufacturing shed. He had also submitted his Report Exh.49 and it is his say that at the time when he visited the plaintiff's agricultural field in question, the entire area was surrounded by distinct and strong odour of phenol and formaldehyde. According to this witness, formaldehyde is a suffocating odour and it is irritating to eyes, mucus, skin and respiratory system and it has a tanning effect on skin, inhalation of formaldehyde causes bronchitis laryngitis and that exposure to this gas for a longer duration has a cracking effect on the skin and it causes ulcer. This witness has deposed that volatile nature of formaldehyde has adverse effect on the farm and human beings working on the farm, from the open top, fumes and vapour of formaldehyde and phenol are directed towards the plaintiff's farm, there was no gas or fume other than formaldehyde and phenol around the farm. Merely because this witness has

admitted that he did not visit the Factory, the witness could not be disbelieved. So far as the odour of the gas and the ill effects of such gas on the crops as well as human being is concerned, it will have impact on the physical presence nearby the factory area and the field in question and for that purpose, it was not necessary for this witness to have gone to the Factory and the witness appears to be right in saying that the entire gas could not go up through Chimney. It is well known that as a result of some chemical reaction if some gas is emitted, such gas is bound to diffuse in the entire surrounding area according to Grahm's Law of Diffusion. It is also found from the available record that on the application of the plaintiff one Balkrushna Chhaganbhai Bhatt was appointed as a Court Commissioner. The said Court Commissioner visited the plaintiff's field on 1.10.76, prepared the Panchanama Exh.36 and found the crop of Fenugreek (Methi) in the plaintiff's field, which was damaged to some extent and this panchanama was prepared in presence of one Purshottambhai Jethabhai representing the defendant. It is a different matter that the said person refused to append his signature on the panchanama. Said Purshottambhai Jethabhai, who is Managing Director of the Factory and who was examined at Exh.77, has denied his presence at the time of the preparation of the Panchanama but in the Panchanama Exh.31 an endorsement is there to the effect that Purshottambhai Jethabhai was present. The panchanama Exh.38 was prepared by Advocate Shri Mukesh Vyas, who was examined at Exh.37 and he had deposed that on 31.1.77 he had gone to the plaintiff's field and it was further deposed that the gas was being discharged through Chimney of the defendant, odour of gas was pungent and suffocating, the gas was irritating to eyes and skin. Thus, the plaintiff's case has been supported that the gas coming out from the defendant's reaction shed was injurious to the crop and was a health hazard to the persons working in the field. So far as the defence, which was taken by the defendant that there was a factory of Gujarat State Fertilizer Corporation opposite to the plaintiff's filed beyond the National Highway No.8 wherefrom sulphuric gas was liberated and the damage to the crop was being caused on account of said gas and that Gujarat State Fertilizer Corporation distributes compensation to the agriculturists in the nearby area after assessing the damages to the crop, is concerned, it may be straightaway observed that even if Gujarat State Fertilizer Corporation's Factory was there and on account of any gas or smoke of sulphur, damage was being caused to the crops of the agriculturists in the nearby area, it does not absolve and could not absolve the defendant from

its liability of causing additional damage to the crop as a result of the gas of phenol and/or formaldehyde discharged by his Factory, which was just adjacent to the plaintiff's agricultural field. If Gujarat State Fertilizer Corporation, which was on the other side of the road, was also paying the damages to the agriculturists, how and on what basis the present defendant could absolve itself from paying damages to the plaintiff for the sufferings of the crop as well as the workers on the field. In this regard, Reference has been made to the Agronomist Ravjibhai Patel, who was examined at Exh.86. Although he has supported the allegation with regard to the payment of compensation by Gujarat State Fertilizer Corporation, he has clearly admitted in Exh.86 that the smoke liberated by the defendant's reaction shed had effect on eyes and that it is like a tear gas and that formaldehyde vapour passes over the crop and the crop gets damaged. Therefore, nothing turns out on the basis of the evidence of Purshottambhai Jethabhai Parikh, the Managing Director of the Factory examined at Exh.77 in favour of the defendant and the evidence of Ravjibhai Patel examined at Exh.86 as an Agronomist of Gujarat State Fertilizer Corporation and the case of the plaintiff remains untrammeled despite the cross examination of the witness Rasnidhi Ramanlal Patel, witness of the plaintiff examined at Exh.48 and the cross examination of the plaintiff himself.

6. Learned trial court has examined the question with regard to the quantum of damages and on the basis of the evidence, which was produced before the Court, the trial court has come to the conclusion that the injurious gas passed out by the defendant's factory has caused damage to the crop and the damages have been assessed to the tune of Rs.2000/- every year. In such matters, the amount could not be determined with any mathematical exactitude. As per the Panchanama Exh.31 dated 5.10.76 the plaintiff had suffered a damage to the tune of Rs.360/- in the crop of Fenugreek i.e. Methi. According to panchanama Exh.38 dated 31.1.77 the plaintiff had suffered a loss to the tune of Rs.1500/- to his wheat crop. These Panchanamas could not be discarded. Whereas the plaintiff had the facility of getting water from the well, the possibility of taking more than one crops in a year cannot be ruled out. On consideration and evaluation of the oral evidence on this aspect of the matter, as has been discussed by the learned trial court, the assessment of damage of Rs.2000/- per year to the plaintiff by any estimate and any norm cannot be said to be excessive or disproportionate and this finding was arrived at on the basis of the evidence, as was available

in this case, and, therefore, the learned trial court has granted the damages for a period of three years and the suit was decreed for a sum of Rs.6000/- and since it was found that the gas liberated as a result of the chemical reaction in the factory of the defendant was injurious an injunction was also granted. In the opinion of this court, the findings arrived at by the trial court, as discussed above, are based on evidence and material and the issues have been rightly decided. The Suit has been correctly decreed for a sum of Rs.6000/- and in the opinion of this court no interference is warranted with the judgment and decree, as has been passed by the trial court, which has been assailed in this Appeal.

It was given out by the learned counsel for the appellant that the sum of Rs.6000/- as was decreed has already been deposited. If at all any amount has been deposited, the same shall be credited in favour of the appellant in case the decree is sought to be executed. The Appeal is accordingly dismissed. In the facts and circumstances of this case, the parties are left to bear their own costs.

(M.R.Calla,J)